



Our weekly roundup aims to keep our readers up to date on recent notable rulings in the food & consumer packaged goods space.

- ***Stephen Dunn, et al. v. Ancient Brands LLC***, No. 5:21-cv-00390-LEK-ML (September 15, 2023): The Northern District of New York granted defendant's motion for judgement on the pleadings of a class action alleging defendant's bone broth products advertise "20g Protein" on the front label when the main source of protein in the products is collagen—which has a low protein digestibility corrected amino acid score (PDCAAS)—meaning that the protein as measured by PDCAAS is allegedly less than what is represented. While the court found that plaintiffs did have standing, the court held that plaintiffs' claims based on defendant's failure to use the PDCAAS for the nutrient content claim on the front label is beyond what is required under federal law and is, therefore, expressly preempted, and any claims based on

defendant's failure to include a "%DV" in the nutritional facts panel are predicated on violations of the federal Food, Drug, and Cosmetic Act (FD&C), which provides no private right of action, and are impliedly preempted. Opinion linked [here](#).

- **Melissa Garza v. Nestle USA Inc. et al.**, No. 1:22-cv-03098 (September 20, 2023)

U.S. District Court for the Northern District of Illinois: The Northern District of Illinois granted dismissal of an putative class action alleging the defendant's milk-based toddler drink powder was falsely advertised as nutritionally appropriate when it contained certain amounts of added sugar. The court held that it lacked proper subject-matter jurisdiction over the case. The plaintiff sought to represent both an Illinois class and a multi-state class, while conceding that the plaintiff was not a member of the multi-state class. The court held that the plaintiff could not represent the multi-state class. In addition, the court found that plaintiff's alleged damages were less than the required \$5 million threshold for Class Action Fairness Act (CAFA) jurisdiction, meaning that jurisdiction on this basis was inappropriate. Opinion linked [here](#).

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